

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

JEFFREY T. BAILEY, individually and
d/b/a JMK FUTURES FUND, and

JMK CAPITAL MANAGEMENT, INC.,
an Ohio corporation,

Defendants.

Case No. C-1-01-212

Judge Beckwith

Magistrate Sherman

CONSENT ORDER OF PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANTS
JEFFREY T. BAILEY AND JMK CAPITAL MANAGEMENT, INC.

On April 12, 2001, plaintiff Commodity Futures Trading Commission (“Commission”) filed a Complaint against Jeffrey T. Bailey, individually and d/b/a JMK Futures Fund ("Bailey"), and JMK Capital Management, Inc. ("JMK Capital") (collectively the “defendants”) seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 et seq. (2001), and Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2001). The Court entered a preliminary injunction against the defendants by consent on April 13, 2001.

I.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint against Bailey and JMK Capital without a trial on the merits or any further judicial proceedings, defendants Bailey and JMK Capital:

1. Consent to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief Against Defendants Bailey and JMK Capital ("Order").

2. Affirm that Bailey and JMK Capital have agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.

3. Acknowledge service of the Summons and Complaint.

4. Admit jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).

5. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).

6. Waive:

- a. all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Regulations, 17 C.F.R. § 148.1, et seq. (2001), relating to, or arising from, this action;
- b. any claim of double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and

c. all rights of appeal from this Order.

7. Bailey and JMK Capital consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this case.

II.

FINDINGS AND CONCLUSIONS

It further appearing to this Court that there is no just reason for delay, the Court being fully advised in the premises and the Court finding that there is just cause for entry of this Order that fully disposes of all issues in this matter, THE PARTIES AGREE AND THE COURT FINDS THAT:

1. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), in that the defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

THE PARTIES

3. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2001), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2001).

4. Defendant Jeffrey T. Bailey, age 40, currently resides and works at 1332 Kingfisher Ct., Amelia, Ohio 45102. He was registered with the Commission as an associated person ("AP") of JMK Capital from July 23, 1993 until September 1, 1999. Bailey committed the acts alleged in this consent order individually and as an agent of JMK Capital. Bailey has never been registered with the Commission as a commodity pool operator ("CPO") and is not currently registered in any capacity. JMK Futures Fund is a business name used by Bailey to refer to the commodity pool he purported to operate.

5. Defendant JMK Capital Management, Inc. is an Ohio corporation incorporated on July 20, 1992 and located at Bailey's home at 1332 Kingfisher Ct., Amelia, Ohio 45102. Bailey formed, and at all relevant times was the sole owner, president and the day-to-day decision-maker for defendant JMK Capital. JMK Capital is also a business name Bailey sometimes used to refer to the commodity pool he purported to operate. JMK Capital was registered with the Commission as an introducing broker ("IB") from August 6, 1993 to October 16, 1998, and as a commodity trading advisor ("CTA") from June 26, 1995 to September 1, 1999. JMK Capital is not currently registered in any capacity.

DEFENDANTS' FRAUDULENT BUSINESS OPERATIONS

6. At all times relevant, Bailey owned businesses known as, or operated as, JMK Futures Fund, JMK Capital Management and Jeff Bailey (individually).

7. Beginning on or before 1995, Bailey was a CPO whose principal business was in the Southern District of Ohio.

8. From approximately May 1998 to March 2001, while acting as a CPO, Bailey received at least \$619,670 in funds from others residing in the Southern District of Ohio, Florida, Texas, Pennsylvania, Michigan, West Virginia, Arkansas, Illinois, New Jersey, Arizona,

Wisconsin and elsewhere. Bailey received these funds for the sole purpose of pooling the funds to trade in commodity futures contracts for the benefit of the pool participants (“investors”).

9. Bailey did not invest all of these funds as intended. Bailey only invested \$248,000, (approximately forty percent) of the funds currently known to have been provided to him. Of those funds invested, from May 1998 to March 2001, Bailey’s trades resulted in an average loss of \$560.08 per month. Bailey’s trades during this period resulted in a total loss of \$60,969.18.

10. From on or before May 1998 to March 2001, Bailey issued investor statements via the United States Mail. These statements displayed exaggerated and fraudulent investment earnings. Based upon the fraudulent earnings, some individuals invested additional funds with Bailey. On or after January 2001 more than sixty investors were provided fraudulent investment statements by Bailey that indicated as of January 2001 they had, collectively, over \$1,800,000 in deposits and earnings with Bailey. In actuality, less than \$39,000 existed in Bailey’s trading account at that time. After subsequent withdrawals by Bailey, the trading account balance as of March 7, 2001 was \$16,507.

11. Bailey diverted to his own use at least \$371,670 of the \$619,670 known to have been provided to him by investors. Bailey used approximately \$290,400 of the diverted funds to pay other clients what they believed were large earnings on their investments. Unbeknownst to the investors, their investments had actually lost money in previous commodity futures trading. Bailey also used investment funds for personal expenses without the knowledge and consent of the investors.

12. Bailey’s dealings with clients Harold Todner, Jeff Madden and Mike Hurley provide an example of Bailey’s misconduct. On or before August 2000, Bailey was provided with \$20,000 in funds meant for investment purposes from Illinois resident Harold Todner. Bailey falsely and fraudulently represented to Mr. Todner that he would invest funds in the commodity

futures market. On or after August 2000, Bailey provided Mr. Todner with an investor statement alleging that he had in fact invested the funds and that the trading of the funds had netted a profit. Bailey did not invest these funds at all. Instead, Bailey used the funds to pay previous investors Jeff Madden and Mike Hurley what they believed were dividends on their prior investments as follows:

a. On May 1998, Ohio resident Jeff Madden provided Bailey \$5,000 meant for investment purposes. Bailey did not invest these funds. However, from May 1998 to December 2000 Bailey paid Mr. Madden \$24,900 in “dividends” and withdrawals. The source of the “dividends” was actually investment funds Bailey received from Mr. Todner and others.

b. From May 1999 to December 2000, Illinois resident Mike Hurley provided Bailey \$65,000 meant for investment purposes. Bailey did not invest a majority of these funds as promised. The funds he did invest actually netted a loss. However, from May 2000 to August 2000, Bailey paid Mr. Hurley \$68,000 in “dividends” and withdrawals. The source of the “dividends” was actually investment funds Bailey received from Mr. Todner and others.

13. The conduct of defendants Bailey and JMK Capital, as set forth above, was done in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

14. By the conduct described in paragraphs 6 through 12, Bailey and JMK Capital cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive investors, in violation of Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(i)

and (iii) (2001).

15. By the conduct described in paragraphs 6 through 12, Bailey and JMK Capital willfully made or caused to be made false reports or statements thereof to investors, in violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii) (2001).

16. By the conduct described in paragraphs 6 through 12, Bailey and JMK Capital acted as a CPO or an AP of a CPO, and made use of the mails or any means or instrumentality of interstate commerce in connection therewith without the benefit of registration with the Commission, in violation of Sections 4k(2) and 4m(1) of the Act, 7 U.S.C. §§ 6k(2) and 6m(1) (2001).

17. By the conduct described in paragraphs 6 through 12, Bailey and JMK Capital employed a device, scheme or artifice to defraud investors or engaged in transactions, practices or courses of business which operated as a fraud or deceit upon investors while acting as commodity pool operators, or as an AP of a CPO, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2001).

18. By the conduct described in paragraphs 6 through 12, Bailey and JMK Capital commingled property of the pool with the property of another person, in violation of Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2001).

19. By the conduct described in paragraphs 6 through 12, Bailey and JMK Capital solicited, accepted or received funds from prospective pool participants without first delivering to each such prospective pool participant a Disclosure Document accurately containing the information set forth in Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25, in violation of Regulation 4.21(a), 17 C.F.R. § 4.21(a) (2001).

III.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendants Bailey and JMK Capital are permanently restrained, enjoined and prohibited from directly or indirectly:

- A. Cheating or defrauding or attempting to cheat or defraud and willfully deceiving or attempting to deceive other persons in or in connection with any order to make, or the making of, any contract or sale of any commodity for future delivery, made, or to be made, for or on behalf of any person if such contract for future delivery is or may be used for (i) hedging any transaction in interstate commerce in such commodity or the products or by products thereof; (ii) determining the price basis of any transaction in interstate commerce in such commodity; or (iii) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(i) and (iii) (2001);
- B. Willfully making or causing to be made to such other person any false report or statement thereof, in violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii) (2001);
- C. Acting as CPOs, or as an AP of a CPO, without being registered as such under the Act and using the mails or any means or instrumentality of interstate commerce in connection with their business as CPOs, in violation of Sections 4k(2) and 4m(1) of the Act, 7 U.S.C. §§ 6k(2) and 6m(1) (2001);
- D. As CPOs, or an AP of a CPO, employing any device, scheme, or artifice to defraud any pool participant or prospective pool participant, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any pool participant or prospective pool participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2001);
- E. As CPOs, commingling the property of any pool they operate or intend to operate with the property of any other person, in violation of Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2001); and

- F. As CPOs, directly or indirectly, soliciting, accepting, or receiving funds, securities, or other property from prospective pool participants without delivering or causing to be delivered to the prospective participant a Disclosure Document containing the information set forth in 17 C.F.R. §§ 4.24 and 4.25, in violation of Commission Regulation 4.21, 17 C.F.R. § 4.21 (2001).

2. Defendants Bailey and JMK Capital are further permanently restrained, enjoined and prohibited, from directly or indirectly:

- A Trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, as amended by the CFMA, 7 U.S.C. § 1a(29) (2001);
- B Engaging in, controlling, or directing the trading of any commodity futures, security futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
- C Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2001), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2001). This includes, but is not limited to, soliciting, accepting, or receiving any funds, revenue or other property from any other person, giving commodity trading advice for compensation except as provided in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2001), or soliciting prospective customers related to the purchase or sale of commodity futures, security futures or options on commodity futures contracts.

3. The injunctive provisions of this Order shall be binding on defendants Bailey and JMK Capital, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of the defendants, and upon any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with defendants Bailey and JMK Capital.

IV.

ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

1. RESTITUTION: Defendant Bailey shall pay restitution in the amount of \$491,100 plus pre-judgment interest thereon from April 12, 2001 to the date of this Order in the amount of \$21,127.38. Pre-judgment interest is calculated at the underpayment rate established by the Internal Revenue Service, pursuant to 26 U.S.C. § 662(a)(2). Interest after the date of this Order until the restitution is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961, assessed pursuant to paragraph IV. 2.e., below, of the payment plan. Attachment A, attached hereto, includes the names and last known addresses of the investors to whom restitution shall be made pursuant to this paragraph, together with the amount of restitution payable by Bailey to each of them (not including required interest) and the pro-rata distribution percentage by which each investor shall be paid. Omission from Attachment A shall in no way limit any investor from seeking recovery from Bailey, JMK Capital or any other person or entity. Further, the amounts contained in Attachment A shall not limit the ability of any investor from proving that a greater amount is owed, and nothing herein shall be construed in any way to limit or abridge the rights of any investor that exist under state or common law.

2. PAYMENT OF RESTITUTION: Restitution shall be made as follows:

- a. The balance of funds in account number 42409, held in the name of Jeffrey T. Bailey at ED&F Man International, Inc., 440 South LaSalle St., 20th Floor, Chicago, Illinois 60605, shall be transferred with Bailey's cooperation to an account designated by a Monitor determined by the Commission and approved by the Court ("the Monitor") within ten days of the date this Order is entered by the Court. The Monitor shall immediately distribute such funds to investors in accordance with Attachment A. Such distribution shall reduce Bailey's restitution obligation to investors on a dollar-for-dollar basis.
- b. Bailey shall make an annual restitution payment ("Annual Restitution Payment") according to the payment plan outlined in

paragraph IV. 4., below, to an account designated by the Monitor of: a percentage of his adjusted gross income (as defined by the Internal Revenue Code) earned or received by him during the previous calendar year, plus (2) all other cash receipts, cash entitlements or proceeds of non-cash assets received by him during the previous calendar year. The Annual Restitution Payment shall be made on or before July 31 of each calendar year, starting in calendar year 2002 and continuing for ten years or until his restitution amount is paid in full from any source, whichever occurs sooner. The ten year restitution period shall run from January 1, 2001 through December 31, 2010. Restitution payments for a calendar year shall take place by July 31 of the following year. Therefore, the final restitution payment for the year 2010 will occur on or before July 31, 2011.

- c. Bailey agrees that the National Futures Association is hereby designated as the Monitor for a period of eleven years commencing January 1, 2001. Notice to the Monitor shall be made to Daniel A. Driscoll, Esq., Executive Vice President, chief Compliance Officer, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, IL 60606.
- d. Bailey shall provide a sworn financial statement to the Monitor on June 30 and December 31 of each calendar year, starting December 30, 2001 and continuing through and including December 31, 2011. The financial statement shall provide;
 - i). a true and complete itemization of all of his rights, title and interest in (or claimed in) any asset, wherever, however and by whomever held;
 - ii). an itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of him over the preceding six-month interval; and
 - iii). a detailed description of the source and amount of all his income or earnings, however generated.

Bailey shall also provide the Monitor with complete copies of his signed federal income tax returns, including all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filings he is required to submit to any state tax or revenue authority, on or before June 30 of each calendar year, or as soon thereafter, beginning in 2001 and ending in 2010. If he moves his residence at any time he shall provide written notice of his new address to the Monitor and the Commission, through the Acting Director or her successor, Division of Enforcement, Commodity Futures Trading Commission, at 1155 21st Street, N.W., Washington, DC 20181, within ten calendar (10) days thereof.

- e. If, during the same time period, Bailey elects to file a joint tax return, he shall provide all documents called for by this paragraph 2, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS Form 1040 containing a certification by a licensed certified public accountant that the "Income" section (currently lines 7-22 of Form 1040) truly, accurately and completely reflects all of Bailey's income, that the "Adjusted Gross Income" section truly, accurately and completely identifies all deductions that Bailey has a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% or the deductions that Bailey is entitled to claim on the joint tax return; provided however that Bailey may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely his. Such individual tax return shall include all schedules and attachments thereto (e.g., IRS Forms W-2) and Forms 1099, as well as any filing required to be submitted to any state tax or revenue authority.
- f. Based on the information contained in Bailey's tax returns, Bailey's sworn Financial Disclosures Statement and other financial records provided to the Commission, the Monitor shall calculate the Annual Restitution Payment to be paid by Bailey for that year and the specific amounts payable to each investor. On or before June 30 of each year and starting in calendar year 2002, the Monitor shall send written notice to Bailey with instructions to pay the Annual Restitution Payment on or before July 31 of that year to an account designated by the Monitor, or if Bailey's restitution obligation has been satisfied, the amount of civil monetary penalty to be paid in accordance with the payment instructions in Paragraph IV. 3. and 4., below. If the Monitor determines that an Annual Restitution Payment is due, then the Monitor will increase the amount of the remaining restitution payment by post-judgment interest calculated to the date of the payment based on the total remaining restitution obligation, pursuant to 28 U.S.C. § 1961. The Monitor shall then disburse any payment by Bailey to the investors in the appropriate amounts listed on Attachment A. Based upon the amount of funds available, the Monitor may decide to defer distribution. If at the end of the ten year payment period, any amount of the Annual Restitution Payments has not been distributed, that amount shall instead be paid and applied as a payment to the civil monetary penalty obligation, as provided in paragraphs IV. 3. and 4., below.

3. CIVIL MONETARY PENALTY: Bailey shall pay a contingent civil monetary penalty of \$195,891.81 pursuant to the payment plan outlined in paragraph IV. 4., below, commencing upon Bailey's fulfillment of his total restitution obligation as set forth in paragraphs IV. 1. and 2., above. Bailey shall make an annual civil monetary penalty payment ("Annual CMP Payment") following Bailey's satisfaction or other discharge of his restitution

obligation, and continuing until December 31, 2011 (or until the civil monetary penalty is paid in full, if that happens first).¹ Bailey shall make each such Annual CMP payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581, under cover of a letter that identifies Bailey and the name and docket number of the proceeding; Bailey shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor and to the Acting Director, or her successor, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, DC 20581.

4. ANNUAL PAYMENT: The Annual Payment (the Annual Restitution Payments and the contingent Annual Civil Monetary Penalty Payments for Bailey after his full restitution obligation has been satisfied) shall be calculated as follows:

a.	Where Adjusted Gross Income Plus Net Cash	
	<u>Receipts Total:</u>	<u>Percent of total to be paid by Bailey is:</u>
	Under \$25,000	0%
	\$25,000 up to and including \$50,000	20% of the amount between \$25,000 and \$50,000
	\$50,000 up to and including \$100,000	\$5,000 (20% of \$25,000) plus 30% of the amount between \$50,000 and \$100,000

¹ Should the amount due under the payment plan for any Annual Restitution Payment be greater than the balance due on Bailey's restitution obligation, the amount due under the payment plan not paid as restitution will constitute Bailey's first Annual CMP Payment and be paid as specified above.

Above \$100,000

\$20,000 (20% of \$25,000 plus 30% of 50,000) plus 40% of the amount above \$100,000

- b. Bailey shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all duties with respect to the restitution and civil monetary penalty payments. He will cooperate fully with the Monitor and the Commission in explaining his financial income and earnings, status of assets, financial statements, asset transfers and tax returns, and shall provide any information concerning himself as may be required by the Commission and/or the Monitor. Furthermore, Bailey shall provide such additional information and documents with respect thereto as may be requested by the Commission and/or the Monitor.

5. THIRD-PARTY BENEFICIARIES: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the individuals identified in Attachment A is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by Bailey, to ensure continued compliance with any provision of this Order and to hold Bailey and JMK Capital in contempt for any violations of any provision of this Order.

6. COLLATERAL AGREEMENTS: Bailey shall immediately notify the Commission if he makes or has previously made any agreement with any investor obligating him to make payments outside of this Order. Bailey shall also provide immediate evidence to the Court and to the Commission of any payments made pursuant to such agreement. Upon being notified of any payments made by Bailey to investors outside of this Order, and receiving evidence of such payments, the Commission will have the right to reduce and offset Bailey's obligation to specified investors, on an annual basis, and to make any other changes in the restitution distribution schedule that they deem appropriate.

7. TRANSFER OF ASSETS: Bailey shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any other person for the purpose

of concealing such funds from the Court, the Commission, the Monitor or any investor or until the Restitution Amounts have been paid in full.

8. DEFAULT: Any failure by Bailey and JMK Capital to carry out any of the terms, conditions or obligations under any paragraph of this Order shall constitute an Event of Default. If any Event of Default occurs the Commission (or its designee) shall be entitled to:

- a. an order requiring immediate payment of any unpaid Annual Restitution Payments and/or CMP Payments, or, at the Commission's option, the entire unpaid balance, or any unpaid portion, of the restitution amount and/or civil monetary penalty set forth above in paragraphs IV.1. through 4., above; and/or
- b. move the Court for imposition of all other available remedies, including, but not limited to, an order holding Bailey in contempt for violation of this Order.

Upon the occurrence of an Event of Default based upon a claim or cause of action that Bailey failed to make any Annual Restitution Payments and/or Annual CMP Payments when due, Bailey will be barred from asserting any defense, including expiration of any statute of limitations, waiver, estoppel or laches, where such defense is based on the alleged failure of the Commission to pursue such claims or causes of action during the pendency of this civil action, during the negotiation of Bailey's consent to this Order or while this Order remains in effect. The only issue that Bailey may raise in defense is whether he made the Annual Restitution Payments and/or Annual CMP Payments as directed by the Monitor. Any motion by the Commission for entry of an order pursuant to this paragraph requiring payment of less than the full amount of the restitution and/or civil monetary penalty, set forth in paragraphs IV.1. through 4., above, or any acceptance by the Commission of partial payment of the Annual Restitution Payments and/or

Annual CMP Payments made by Bailey shall not be deemed a waiver of the Commission's right to require Bailey to make further payments pursuant to the payment plans set forth above, or, in the event of a further Event of Default, a waiver of the Commission's right to require immediate payment of the entire remaining balance, or any unpaid portion, of the restitution amount and/or civil monetary penalty set forth in paragraphs IV.1. through 4., above.

9. Based upon Bailey's sworn representations in his Financial Disclosure Statement dated June 18, 2001, and other evidence provided by Bailey to the Commission regarding his financial condition, the Court is not ordering immediate payment of the entire restitution obligation and civil monetary penalty. The determination not to require immediate payment of the entire restitution obligation and civil monetary penalty is contingent upon the accuracy and completeness of Bailey's Financial Disclosure Statement and other evidence provided by Bailey regarding his financial condition. If at any time following the entry of this Order, the plaintiff Commission obtains information indicating that Bailey's representations to the Commission concerning his financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, the Commission may move this Court for an order requiring Bailey to make immediate payment of his entire restitution obligation and/or civil monetary penalty, or of any portion thereof, the amount of which shall be determined by the Commission. In connection with any such motion, the only issues shall be whether the financial information provided by Bailey was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made. In its motion, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Bailey to pay funds or transfer assets or directing the forfeiture of any assets, and the Commission may also request additional discovery. Bailey may not, by way of defense to such motion, challenge the validity of his consent or this Order, or contest any of the findings of fact or

conclusions of law set forth in this Order, assert that payment of restitution and/or a civil monetary penalty should not be ordered, or contest the amount of the restitution or civil monetary penalty to be paid. If in such motion the Commission moves for, and the Court orders, payment of less than the full amount of the restitution obligation or the full amount of civil monetary penalty, such motion will not be deemed a waiver of the Commission's right to require Bailey to make further payment pursuant to the payment plans set forth above.

V.

MISCELLANEOUS PROVISIONS

A. ENTIRE AGREEMENT, AMENDMENTS and SEVERABILITY. This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.

B. PUBLIC STATEMENTS. By consenting to the entry of the Order attached hereto, Bailey and JMK Capital agree that neither they nor any of their agents or employees under their authority and control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding in the Order or creating, or tending to create the impression that the Complaint or the Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Bailey and JMK Capital shall take all steps necessary to ensure that their agents and employees comply with this provision.

C. SUCCESSORS AND ASSIGNS. This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.

D. JURISDICTION. This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Equitable Relief Against Bailey and JMK Capital.

Done and ordered on this 18th day of December, 2001.

UNITED STATES DISTRICT COURT JUDGE

Consented to and
approved for entry by:

Jeffrey T. Bailey
Dated: _____

Mark Bretscher
Senior Trial Attorney
(Pro hac vice)

Jeffrey T. Bailey
President,
JMK Capital Management, Inc.
Dated: _____

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